Supreme Court, U.S.
FILED
SEP 5 - 2006
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No. 06-486

In The Supreme Court of the United States

LOG FURNITURE, INC. and CARI ALLEN,
Petitioners,

v.

STEVEN CALL; RAY, QUINNEY & NEBEKER; GRANITE STONE, L.C.; MACHINERY HARDWARE & SUPPLY, INC.; and DAVID HARRIS,
Respondents.

Appendix to Petition for Writ of Certiorari To The Supreme Court of the United States

APPENDIX

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re	)	
	)	
Log Furniture, inc.,	)	Bankruptcy Case
	)	No. 03C-38622
Debtor.	)	Chapter 7
	)	
	)	ORDER DENYING AMENDED
	)	MOTION TO DISMISS

The Amended Motion of Golden Meadows Properties, LLC ("Golden Meadows") came before the court on January 5, 2004. Ralph Petty appeared for Golden Meadows and Nupetco Associates; Steven W. Call appeared for Granite Stone, LC and Machinery Hardware Supply, Inc.; Howard Johnson appeared for Log Furniture management; Bryan Booth and Robert Prince appeared for Depot Associates, LLC; Reid Lambert appeared for Elizabeth Loveridge, the interim Chapter 7 trustee; Peter Kuhn appeared for the United States Trustee, and David Sorensen appeared fo the Internal Revenue Service. The Court, having considered the pleadings and documents on file and the arguments of counsel, denies the motion to dismiss based upon the following:

1. Log Furniture is a Nevada corporation organized December 2, 1999.
2. Carl Allen was the initial 100.0% shareholder of the stock of Log Furniture, Inc., (the "stock").
3. On or around July 21, 2000, Cari Allen pledged her shares of stock to Golden Meadows as security for a Trust Deed Note.
4. Machinery Hardware & Supply, Inc., ("Machinery Hardware) is a Utah corporation which ran an open account with Log Furniture, Inc. The open account was personally guaranteed by Cari Allen.
5. The open account with Log Furniture, Inc., went into default and Machinery Hardware obtained a judgment against Log Furniture, Inc. and Cari Allen personally.
6. On June 7, 2003 Machinery Hardware served a Writ of Execution on Cari Allen attaching all of Cari Allen's interest in property including any stock or corporations.
7. Machinery Hardware assigned its interest in its judgment and the stock to Granite Stone.
8. An execution on the stock was made in Third District Court for the State of Utah on or around June 17, 2003. in favor of Machinery Hardware or its assignee, Granite Stone.
9. On June 24, 2003, Golden Meadows caused a Notice of Default with respect to the pledged stock to be delivered to Cari Allen. The default was not cured within 7 days.
10. Golden Meadows contends that as a result of the pledge and default, it obtained the voting rights in the stock.
11. On September 10, 2003, Granite Stone caused to be conducted a Sheriffs sale of Cari Allen's personal property, which property sold for a five hundred dollar credit bid.
12. Golden Meadows argues that because it had served the Notice of Default upon Cari Allen and the default had not been cured within 7 days, Granite Stone took the stock without any right to vote the stock, and that without the right to vote the stock, Granite Stone had no authority to file the bankruptcy petition of Log Furniture.

The only language in the pledge agreement relied upon by Golden Meadows with respect to voting rights is found in the f

Final sentence (the "sentence") of the pledge agreement which provides, "[n]othing in this agreement shall diminish or impede the ability of the undersigned to vote the pledged stock or to operate Log Furniture until such time as there may be a default under the terms of the trust deed note and trust deed and the undersigned have been given seven days written notice of default."

14. The sentence is not a creditor's remedy.

15. The sentence does nothing more than guarantee that Cari Allen's voting rights and the right of present management to operate the business will not be diminished or impeded.

16. The sentence provides no remedy for a creditor on default.

17. Forfeiture of voting rights and the loss of the right to operate ones business are both drastic remedies that require specific language affirmatively providing for such remedies.

18. There is no remedy in the pledge agreement that provides for forfeiture of voting rights or for the loss of the right to operate ones business.

19. The pledge agreement is silent with regard to a creditor's remedy upon default.

20. Whether or not the execution sale sold the stock subject to a Claim of Golden West is irrelevant to the Granite Stone's voting rights on the stock.

Nevada State Law

1. Golden Meadows argues that Granite Stone was not properly authorized under Nevada state law to cause Log Furniture's bankruptcy petition to be filed citing to Nevada Revised Statute § 78-115.

2. Granite Stone indicates that Nevada Revised Statute § 78-320 allows shareholders to take action by written consent.

3. The Court finds that two Nevada Revised Statutes appear to conflict with one another

4. When two statutes are capable of coexistence, it is the court's duty, absent a clearly expressed congressional

intention to the contrary, to regard each as effective. Even where two statutes are not entirely harmonious, courts must, if possible, give effect to both, unless it is clear that the earlier statute was intended to be repealed. In re Duncan, 329 F.3d 1195 (10th Cir. 2003).

5. Nevada Revised Statute § 78-115, provides that the business of every corporation must be managed by a board of directors all of whom must be natural persons of at least 18 years of age and that all Nevada corporations must have at least one director.

6. Granite Stone in not a natural person over the age of 18 years of age.

7. Nevada Revised Statute § 78-320 refers to stockholders meetings not regularly called. It states that whenever all persons entitled to vote at any meeting whether directors, trustees or stockholders consent by a writing on the records of the meeting or filed with the secretary, at such meeting any business may be transacted which is not exempted from the written consent or consideration of which no objection for want of notice is made at that time.

8. Giving effect to both statutes, the Court finds that Nevada Revised Statute § 78-320 provides that stockholders may conduct business of a corporation.

9. Pursuant to Nevada Revised Statute § 78-322, Granite Stone, the sole stockholder of Log Furniture had the authority to file the Log Furniture bankruptcy petition.

10. The filing of the bankruptcy petition by Granite Stone was valid.

Based upon the above, it is hereby;

ORDERED that the Golden Meadows Motion to Dismiss is denied.

DATED this 30 of March, 2004

BY THE COURT

"s/ _____"

Glen E. Clark, Chief Judge
United States Bankruptcy Court

Order Submitted by:
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF UTAH, CENTRAL DIVISION

In Re: LOG FURNITURE, INC., Debtor. LOG FURNITURE, INC., GOLDEN MEADOWS PROPERTIES, LLC and NUPETCO ASSOCIATES, Plaintiffs/Counter-Defendants,	Case No. 03-38622 GEC (Chapter 7) Adversary Proceeding No. 03-2466
vs. GANITE STONE, LC, Defendant And Counter-Plaintiff, and MACHINERY &	**ORDER OF DISMISSAL**

HARDWARE SUPPLY, INC., DAVID HARRIS, STEVEN CALL, and ROBERT SWAN, trustee.

Defendants

A hearing came on before the Court on March 30, 2004 in the above captioned adversary proceeding. Steven W. Call and Steven C. Strong of Ray, Quinney & Nebeker appeared on behalf of defendants Granite Stone, L.C., Machinery & Hardware Supply, Inc., and David W. Harris. Stephen B. Mitchell of Burbidge and Mitchell appeared on behalf of defendant Steven W. Call Ralph Petty appeared on behalf of Golden Meadows Properties, LLC and Nupetco Associates. Howard P. Johnson appeared on behalf of the former management of Log Furniture, Inc. Robert Swan, who is the trustee in the case, did not appear at the hearing.

The Court having considered the present and prior proceedings before the Court in the above □captioned adversary proceeding and in the bankruptcy case, and having further considered the relief requested by the defendants at the hearing and based upon the findings, conclusions and determinations made this Court in such matters, and for other appropriate cause which appears in the record in this proceeding and the case, IT IS HEREBY:

ORDERED that this proceeding and the complaint filed on November 7, 2003, which commenced the proceeding,, and the amended complaint which was served upon the defendants and answered thereby
on or about January 23, 2004, are hereby dismissed with prejudice.

DATED this 20 day of April. 2004.

BY THE COURT:

"s/ _____ "
Glen E. Clark, Chief Judge

The below described is SIGNED
Dated: July 28, 2004 "s/_____"
GLEN E. CLARK
U.S. Bankruptcy Judge

Order Prepared and Submitted By:

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UNITED STATES BANKRUPTCY COURT FOR

THE DISTRICT OF UTAH CENTRAL DIVISION

In Re: LOG FURNITURE, INC., Debtor. LOG FURNITURE, INC., and CARI ALLEN Plaintiffs vs. STEVEN CALL; RAY QUINNEY & NEBEKER, GRANITE STONE, LC, MACHINERY & HARDWARE SUPPLY, DAVID HARRIS Defendants.	Case No. 03-38622 (Chapter 7) Adversary Proceeding No. 04-2497 **ORDER** The Honorable Glen E. Clark

On June 9, 2004, a hearing was held before the Court on the motions to dismiss filed by the defendants in the above-captioned adversary proceeding. Steven T. Waterman and Steven C. Strong of Ray, Quinney & Nebeker appeared on behalf of Granite Stone L.C., Machinery & Hardware Supply, Inc. and David W. Harris. Richard D. Burbidge of Burbidge & Mitchell appeared on behalf of defendants Steven W. Call and Ray Quinney & Nebeker. Elizabeth R.Loveridge, the duly appointed interim trustee of Log Furniture, Inc., appeared with her counsel, David R Williams of Woodbury & Kessler. Howard P. Johnson appeared at the hearing. Cari Allen, Plaintiff, appeared pro se.

The Court having considered the motions to dismiss which have been filed with the Court, the memoranda of points and authorities filed in support and opposition to the motions, and the Court's prior rulings in the main bankruptcy case and related adversary proceeding, and having made findings and conclusions upon the record and for good cause appearing,

IT IS HEREBY

ORDERED that all claims of Log Furniture, Inc. against the defendants are hereby dismissed with prejudice; and

ORDERED further that the claims in the complaint which allege, relate to, or arise from the allegations that the above referenced bankruptcy case was not lawfully filed, are barred by the doctrine of res judicata and arc hereby dismissed with prejudice; and

ORDERED that while nothing in this order alters any prior rulings made by the Bankruptcy Court in this case, nothing in this Order shall prejudice the rights of the Trustee because she was not a party to the adversary proceeding nor did she consent thereto; and

ORDERED further that this Court having dismissed with prejudice all claims which arise from, arise in, or relate to the bankruptcy filing and noting this Court's prior rulings and orders made on those matters are binding upon all Federal and State Courts under the doctrine of *res judicata*, the remaining claims, if any, of Cari Allen are remanded to the Third Judicial District Court, Salt Lake County, State of Utah: and

ORDERED further that this Order is final as to the matters relied upon and should be entered by the clerk of the Court as a

final order pursuant to Fed. R. Bankr. P. 7054(a) and Fed. R..Civ. P. 54(b), the Bankruptcy Court having determined that there is no just reason for delay because there is nothing remaining in the adversary proceeding to be adjudicated, the Bankruptcy Court having dismissed the claims as set forth above and having remanded any remaining state law claims of Cari Allen that do not pertain to the appropriateness of the bankruptcy filing, if any, to the State Court.

Dated this ____ day of July 2004.

HON. GLEN E. CLARK
Chief Judge, United States
Bankruptcy Court, District of Utah

Approved as to form:
WOODBURY & KESSLER
"s/ "
Elizabeth Loveridge
Reid Lambert
Attorneys for the Trustee

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. STEVEN CALL, et al., Appellees	ORDER GRANTING MOTION TO DISMISS IMPROPER APPEAL AND AFFIRMITNG BANKRUPTCY COURT ORDER DISMISSING ADVERSARY PROCEEDING WITH PREJUDICE Case No. 2:04-CV -00897PGC

Appellee's Motion to Dismiss Improper Appeal is hereby GRANTED (#3-1). Attorney Howard P. Johnson filed the underlying Adversary Proceeding on behalf of Log Furniture, Inc., a Chapter 7 debtor. Cari Allen, formerly the sole shareholder of Log Furniture, Inc., joined as a *pro se* litigant. Chief Judge Clark of the bankruptcy court previously dismissed these claims with prejudice. His order has been appealed to this court. Appellee's have moved to dismiss the appeal, arguing that appellant's lack standing.

The claims asserted by Mr. Johnson are the property of the bankruptcy estate and are appropriately asserted only by the Trustee of the estate. 'Mr. Johnson has not been employed by the trustee and therefore has no standing to assert claims on behalf of the debtor corporation .

Chief Judge Clark has also previously ruled that any interests Ms. Allen had in Log Furniture, Inc. were sold prior to the bankruptcy petition. Because Ms. Allen holds no equitable or pecuniary interest in Log Furniture, Inc., she is not a "person

aggrieved" and has no standing to assert her claims in this case.[2]

Inasmuch as Chief Judge Clark's ruling on the Adversary Proceeding relied upon the lack of standing of the appellants, the court hereby also AFFIRMS his decision. The Clerk's Office is directed to close the case.

DATED this 4th day of November, 2004.

BY THE COURT:

"s/ _____"
Paul G. Cassell
United States District Judge

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[1] *Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985)*

[2] *Holmes v. Silver Wings Avaiation, Inc., 881 F.2d 939, 940 (10th Cir 1989).*

IN THE UNITED STATES COURT FOR THE DISTRICT COURT DISTRICT OF UTAH – CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. GRANITE STONE, L.C. et al.,, Appellees	ORDER Case No. 2:04cv00505
In re LOG FURNITURE, INC., Debtor.	Bankruptcy Case No. 03-38622 (Chapter 7) Adversary Proceeding 03-2466

Before the Court is an appeal brought by Log Furniture, Inc., represented by attorney Howard Johnson; Cari Allen, appearing pro se; and Golden Meadows, L.L.C.. The appeal is one of many proceedings arising out of the filing of a Chapter 7 bankruptcy petition on October 31, 2003. The petition was filed by appellee Granite Stone, L.C., on behalf of Log Furniture. The Court, having reviewed the briefing and relevant law, issues the following order.

I. BACKGROUND

The facts underlying this matter are generally as follows. Allen was the sole officer and sole shareholder of Log Furniture. In 2000, Golden Meadows, a creditor of Log Furniture, received a security interest in Allen's Log Furniture stock. In 2003, Machinery Hardware &Supply, Inc., another creditor of Log Furniture and Allen, obtained a judgment for unpaid debts and executed on the

stock. After purchasing the stock at a sheriff s sale, Machinery Hardware assigned its interest in the stock to Granite Stone, yet another creditor of Log Furniture.

As the sole shareholder of Log Furniture, Granite Stone took steps to remove Allen as the company's director. Having taken those steps, Granite Stone continued to act as the sole shareholder and initiated bankruptcy proceedings for Log Furniture. Appellants objected to the bankruptcy petition, arguing that Granite Stone lacked authority to file it. Appellants voiced their objections within the bankruptcy case and also within an adversary proceeding initiated in the bankruptcy court. The bankruptcy court ultimately rejected appellants' arguments, ruling that Granite Stone had authority to file the petition. Accordingly, the bankruptcy court dismissed the adversary proceeding and denied the various motions filed by appellants.

Appellants then filed numerous appeals and motions in both state and federal district courts, creating a fractured and complex procedural history for the overall dispute. The appeals and motions have all raised basically the same arguments and, to date, have been unsuccessful, yet appellants continue to strive for a different outcome. This particular appeal is from a judgment signed April 20, 2004 by the bankruptcy court which dismissed the adversary proceeding with prejudice.[1] In their joint brief, appellants raise numerous arguments as to why the dismissal was improper. Appellants' overarching argument remains that Granite Stone did not have authority to file a bankruptcy petition for Log Furniture.

II. ANALYSIS

A. Appellant Log Furniture

The Court finds that Log Furniture's appeal must be dismissed for lack of standing. The bankruptcy court ruled that Log Furniture, as represented by Howard Johnson, did not have standing

[1] The Court notes that Log Furniture and Cari Allen also appealed a judgment of the bankruptcy Court entered July 28, 2004, which likewise dismissed the adversary proceeding with prejudice. That appeal was addressed in the order for case number 2:04cv00897 (J. Cassell, November 4, 2004)

to raise any claims on behalf of Log Furniture because such claims belong to the bankruptcy estate and are appropriately asserted only by the trustee of the estate. The Court agrees with the bankruptcy court. This finding is consistent with Judge Cassell's Order dated November 4, 2004, in case number 2;04cv00897. It is also consistent with the Court's Order dated April 7, 2005, in case number 2:04cv00389. The appeal as filed by Log Furniture is accordingly DISMISSED.

B. Appellant Golden Meadows

Golden Meadows' appeal is based on an argument that it, rather than Granite Stone, had authority to control Log Furniture. Golden Meadows argues that it obtained stock and voting rights in Log Furniture via a pledge agreement executed by Allen in July 2000. At the time of the pledge, Allen was the sole shareholder of Log Furniture. The pledge agreement gave Golden Meadows a security interest in Allen's Log Furniture stock to secure a trust deed note and other debt owed by Allen. Allen eventually defaulted on the trust deed note, and Golden Meadows sent Allen a notice of default on June 21, 2003. By that time, Machinery Hardware had obtained a judgment against Log Furniture and Allen for unpaid debts. On June 7, 2003, Machinery Hardware served a writ of execution on Allen that attached various property interests, including her stock interests. Machinery Hardware later bid successfully on the stock interests at a sheriff's sale.

Golden Meadows argues that it obtained ownership of Allen's Log Furniture stock and Allen's attendant voting rights and ability to control Log Furniture upon Allen's failure to cure her default by June 28, 2003. To support its argument, Golden Meadows relies on the following provision of the pledge agreement: .

> [N]othing in this agreement shall diminish or impeded [sic] the ability of [Cari Allen] to vote the pledged stock or to operate Log Furniture, Inc., until such time as there may be a default under the terms of the Trust Deed Note and Trust Deed and [Cari Allen has] been given seven (7) days written notice of default.

The bankruptcy court reviewed the provision and found that it did not give Golden Meadows the interests and rights Golden Meadows claims. At a hearing on January 5, 2004, the bankruptcy court found as follows:

> The sentence relied upon [by Golden Meadows] is not a creditor's remedy. It does nothing more than guarantee that Cari Allen's voting rights and the right of present management to operate the business will not be diminished or impeded. The sentence provides no remedy for creditor on default. Forfeiture of voting rights, loss of right to operate one's business are both drastic remedies that require specific language affirmatively providing for such remedies. There are no such remedies provided for within the pledge of stock, and this court will not read such a remedy into the pledge of stock by application. Because the pledge of stock is silent regarding the creditor's remedies, then the creditor is left with its remedies under state law.

The bankruptcy court noted at the hearing that, in a related ruling dated July 23, 2003, Judge Medley of the Utah State Court found nothing in the provision precluding Machinery Hardware's execution on the stock: any "lienhold interest [Granite Meadows had] against such property would not preclude a junior creditor from executing on its junior leasehold interests against the property. "

The Court agrees with and affirms the bankruptcy court's rulings on this issue. While the pledge agreement may have given Golden Meadows a security interest in Allen's Log Furniture stock, it did not give Golden Meadows special creditor remedies such as an automatic transfer of ownership, voting rights, or the ability to control Log Furniture. Nor did the provision preclude Machinery Hardware from attaching and executing on the stock for whatever value it might be entitled to in light of Golden Meadows' competing interest. Golden Meadows' argument thus fails, and the relief requested by Golden Meadows in this appeal is DENIED.

C. Appellant Cari Allen

Cari Allen requested joinder in this appeal via a motion that the Court granted. The Court finds that Allen lacks standing as a former shareholder to make any challenges to the rulings of this case. This finding is consistent with the Court's Order dated April 7, 2005, in case number 2:04cv505 and with Judge Cassell's Order dated November 4, 2004, in case number 2:04cv00897.[2] Even assuming that Allen has standing as the allegedly wrongfully displaced director of Log Furniture, rather than a former shareholder, her claims still fail. The Court is unpersuaded by Allen's arguments that the execution on the stock was invalid, that Granite Stone violated Nevada corporate law, and that the bankruptcy court dismissed the adversary proceeding for pretextual reasons. The Court is likewise unpersuaded by Allen's argument that appellees committed fraud on the courts that would justify vacation of the bankruptcy court's rulings.[3] The relief requested by Allen in this appeal is therefore DENIED.[4]

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[2]The finding is also consistent with the opinion of theUtah Court of Appeals issued November 26, 2004. Granite Stone, L.C. v.Allen, 2004 Utah App. LEXIS 501, 2004 UT App 435. Allen argues that the Utah Court of Appeals declared in a more recent opinion that she does have standing. Allen v. Call, 2005 Utah App. LEXIS 222, 2005 UT App 223. In that opinion, however, the court held that Allen was in privity with Log Furniture for purposes of res judicata and was consequently barred from asserting certain claims. ID. At *4.

[3]The Court notes that Allen's fraud on the courts argument also failed in a proceeding before Judge Iwasaki of the Third Judicial District Court of Utah. Case No. 040904759 (Order, December 16, 2004).

[4]In her reply brief, Allen makes allegations concerning LogFurniture's former landlord, Depot Associates. Allen alleges that Depot Associates created a scheme to evict and attack Log Furniture in order to use Log Furniture's rental space for a lucrative government contract. These allegations are beyond the scope of the present appeal, to which Depot Associates is not a party.

The Court directs the Clerk of the Court to close this case.
IT IS SO ORDERED.
Dated this 13th of June 2005.

"s/ _____"
Dee Benson
U.S. District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT COURT DISTRICT OF UTAH – CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. GRANITE STONE, L.C. et al., Appellees.	**ORDER** Case No. 2:04cv00505
In re LOG FURNITURE, INC., Debtor.	Bankruptcy Case No. 03-38622 (Chapter 7) Adversary Proceeding 03-0246

Before the Court are motions by appellants Golden Meadows Properties, L.L.C., Log Furniture, Inc., and Car Allen to reconsider the Court's order dated June 13, 2005. In that order, the Court affirmed the bankruptcy court's dismissal of an adversary proceeding. The Court, having reviewed the record, briefing, and relevant law, hereby DENIES appellants' motion. The Court adopts the reasoning presented in appellees' memorandum in opposition as the basis for this order.

IT IS SO ORDERED.

Dated this 22nd of July 2005.

"s/ _____ "

Dee Benson
U.S. District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT

COURT DISTRICT OF UTAH – CENTRAL DIVISION

LOG FURNITURE, INC., et al., Appellants, vs. GRANITE STONE, L.C. et al., Appellees	**ORDER** Case No. 2:04cv00369
In re LOG FURNITURE, INC., Debtor.	Bankruptcy Case No. 03-38622 (Chapter 7) Adversary Proceeding 03-2466

Before the Court is an appeal by Log Furniture, Inc. and Golden Meadows Properties from an order of the bankruptcy court. Having reviewed the record and briefing, the Court finds that it has already addressed the issues dispositive of this appeal in previous orders. See Order, Case No. 2:04cv00505 (June 13, 2005); Order, Case No. 2:04cv00389 (April 7, 2005); Order, Case No. 2:04cv00349 (Nov. 10, 2004); Order, Case No. 2:04cv01030 (May 26, 2004); see also Order, Case No. 2:04cv00897 (Nov. 4, 2004) (J. Cassell). Indeed, appellants noted in their briefing that the statement of issues for this appeal is coextensive with the statement of issues for the appeal addressed in the Court's most recent order. See Memorandum in Support of Motion to Consolidate Cases, ¶8 ("The statement of issues . . . in each appeal are nearly identical."); Order, Case No. 2:04cv00505 (June 13, 2005).

Having already ruled against appellants on all dispositive issues, the Court hereby DISMISSES the appeal.

IT IS SO ORDERED.
Dated this 28th of September 2005.

"s/ _____"
Dee Benson
U.S. District Court Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LOG FURNITURE, INC.,;
CARI ALLEN

Plaintiffs-Appellants,

v.

STEVEN CALL; RAY, QUINNEY & NEBEKER; DAVID HARRIS; MACHINERY & HARDWARE SUPPLY; GRANITE STONE, L.C.,

Defendants- Appellees

No. 04-4276
(D.C. No. 2:04-CV-897-PGC)
(D. Utah)

In re: LOG FURNITURE, INC.,

Debtor.

LOG FURNITURE, INC.;
GOLDEN MEADOWS

No. 05-4228
(D.C. No. 2:04-CV-505-DB)
(D. Utah)

PROPERTIES; CARI ALLEN,
Plaintiffs -Appellants,
v.

GRANITE STONE L.C.; MACHINERY HARDWARE & SUPPLY; DAVID HARRIS; STEVEN W. CALL,
Receiver; ELIZABETH LOVERIDGE, ROBERT H. SWAN,

Defendants- Appellees

In re: LOG FURNITURE, INC.

Debtor.

No. 05-4266
(D.C. No. 2:04-CV-369-DB)
(D. Utah)

GOLDEN MEADOWS PROPERTIES;
LOG FURNITURE, INC.

Plaintiffs-Appellants

and

CARI ALLEN,

Appellant,

v.

GRANITE STONE, L.C.,

Defendant-Appellee.

ORDER AND JUDGMENT

Before LUCERO, PORFILIO, and HARTZ, Circuit Judges.

We have before us three separate appeals involving essentially the same parties and essentially the same issues in all three. The panel unanimously has concluded oral argument is unnecessary because the appeals are frivolous, Fed. R. Civ. P. 34(a)(2)(B); therefore, we have joined the cases for disposition only. After review, we dismiss in part and affirm in part.

Over the course of almost three years, the Appellants have been parties to no less than nine separate legal actions raising these same issues before two Bankruptcy Judges and two District Judges from the District of Utah, one state district judge and the two Utah appellate courts. This odyssey ends in our court.

Throughout this journey, Appellants have doggedly pursued two themes: first, the voluntary Chapter 7 bankruptcy petition filed on behalf of Log Furniture, Inc. which is the root of all this litigation, was illegally filed, and, second, a conjectural entity named "Log Furniture" exists outside of the bankruptcy proceeding. The parties treat this specter as though it were an *alter ego* of the Debtor in Bankruptcy, a separate existence unaffected by the Bankruptcy Code and in need of their protection from the vicissitudes of Appellees.[1] As part of these themes, Appellants also contend Granite Stone, L.C. was not the lawful owner of the stock of Log Furniture, Inc. at

the time Granite Stone filed the petition in bankruptcy, but instead the stock belonged to Golden Meadows Properties because of a "pledge agreement" between Golden Meadows, Log Furniture, Inc., and Cari Allen.[2] What these three cases now present to us is a tangled, nearly indecipherable mess of repeated and convoluted contentions engulfed in more smoke than a Friday boys-night-out poker jamboree.

The parties are well acquainted with the facts; therefore, it is unnecessary to repeat them here. Suffice to note, each of the issues mentioned above has been litigated to conclusion in the different fora, and, in each instance, Appellants' causes were carefully and correctly analyzed by the court[3]. Nonetheless, lest Appellants' be persuaded we do not give sufficient consideration to their appeals, we will deal briefly with the essential points they have raised.

First, Log Furniture, Inc. has no *alter ego*. Once the bankruptcy petition was filed, it became a Debtor in Bankruptcy. It is the foundational concept of the laws of bankruptcy that "all the legal and equitable interests in property" a Debtor has at the commencement of a case become the property of the bankruptcy estate, 11 U.S.C. § 541(a)(1). As such, those assets, including the claims asserted by the attorneys and Ms. Allen, are within the sole control of the Trustee in Bankruptcy whose duty it is to "collect the property of the estate and reduce it to cash. "11 U.S.C. § 704 (a) (l). See *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). Hence, if, as Appellants allude, "Log Furniture" has "post-petition claims," these "claims" are also Debtor's property and part of the bankruptcy estate subject to collection by the Trustee for the benefit of the creditors of Log Furniture, Inc.

Moreover, the Code makes no provision within the structure of Chapter 7 for "former management" to appear in the proceeding and attempt to control the property of the estate,

or assert a separate interest on behalf of the Debtor. The whole notion that the contrary is true is antithetical to the basic concept of a corporate liquidating bankruptcy under Chapter 7 of the Code. Nothing is cited or argued by the Appellants that excepts them from this statutory construct.

Consequently, neither the lawyers who have purportedly appeared in this and other courts on behalf of "Log Furniture," nor Cari Allen, who represents herself to be the "sole stockholder of Log Furniture," has individual standing to pursue this litigation.[4] The only person with standing or legal capacity to represent Log Furniture, Inc.[5] in any litigation, including these appeals, is its Trustee. To argue other wise is simply specious.

As a consequence, now that we have been able to blow away the clouds of smoke that have enveloped Appellants' appeals, we will not consider further any arguments raised by either the lawyers claiming to represent "Log Furniture" or by Ms. Allen. The claims they seek to raise are not theirs to pursue, and that fact will never change. Their cases are wholly without merit in law or fact, and their appeals in cases 04-4276, 05-4228, and 05-4266 are DISMISSED as frivolous. *Thompson v. Gibson*, 289 F .3d 1218, 1222-23 (l0th Cir.. 2002) (holding that an appeal without an arguable basis in law or fact is frivolous and subject to dismissal).

Golden Meadows appears as an appellant in 05-4228 and 05-4266, ostensibly to argue the district court erred in determining the ownership of the stock of Log Furniture, Inc. prior to bankruptcy and that Golden Meadows' pledge agreement did not vest it with a controllable interest in Log Furniture, Inc. Much of its argument is centered in a convoluted procedural contention with due process overtones that neither the bankruptcy court nor the district court had jurisdiction to decide these issues because of a now-dissolved Temporary Restraining Order.

The record, however, indicates the district court order from which the appeal in 05-4228 has been taken was entered on June 13, 2005, and the order in 05-4266 was entered on September 28, 2005. The TRO was dissolved by stipulation on May 26, 2004. Under these circumstances, the jurisdictional argument of Golden Meadows loses its force.

Golden Meadows also asserts neither the district court nor the bankruptcy court heard testimony on the "stock ownership issue." The assertion lacks substance because both courts ruled upon the issue as a matter of law.

Simply put, both courts concluded that by its own terms the pledge agreement did nothing more than provide Cari Allen with "the ability. . . to vote the pledged stock or to operate Log Furniture, Inc., until such time as there may be a default. . . and [Cari Allen] has been given seven (7) days written notice of default." Both courts determined the agreement by its own terms gave the creditor "no remedy" in the case of a default, and neither court was persuaded to interpret the document to provide one. Golden Meadows has advanced no credible argument that the legal determinations were not correct [6]

For these reasons, the judgments against Golden Meadows in 05-4228 and 05-4266 are AFFIRMED [7]

Entered for the Court

"s/_____"
John C. Porfilio
Circuit Judge

FOOTNOTES

[1] For the sake of better clarity, the use of quotation marks throughout this Order and Judgment indicates the *alter ego*.

[2] After the filing of the bankruptcy petition, Howard Johnson, a lawyer claiming to represent "Log Furniture," and Ms. Allen filed a motion to dismiss the petition on the ground Granite Stone was not the stockholder of Log Furniture, Inc. and, thus, was without authority to file the petition. This motion was denied by the bankruptcy court, leading to an "emergency appeal" to the district court. (continued...)
(.....continued) Appellants assert the district court then issued a Temporary Restraining Order ostensibly prohibiting the liquidation of the Debtor, but the merits of the Bankruptcy Court's order of dismissal and its findings concerning the propriety of the filing apparently was not ruled upon at that time. The TRI was subsequently dissolved by stipulation.

[3] Suffice to say we see no reversible error in any of the decisions of the district and bankruptcy courts.

[4] Ms. Allen's position is hard to discern because she appears here pro se. To the extent she contends some undefined or contingent ownership rights which give her standing to question the validity of the bankruptcy filing, her interest is at best derivative. As a consequence, she is still without standing. *See Holmes v. Silver Wings Aviation, Inc., 881 F.2d 939,940 (10th Cir. 1989).*

[5] In reality, the legal entity is now the bankruptcy estate, not a corporation

[6] One might logically conclude even if the contrary were true, the pledge agreement required seven days' written notice of default before any residual rights would devolve to the benefit of Golden Meadows. The writ of execution was served upon Ms. Allen before such a notice was given to her, so any right Golden Meadows might arguably claim never reached fruition before its termination by the writ of execution.

[7] Appellees have also advanced an argument that Golden Meadows' appeals are moot for more than one reason, not the least of which is that Golden Meadows has entered into a final and sweeping settlement with the Trustee. We forego ruling on the issue, however valid it appears, simply because of the lack of merit in these appeals.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LOG FURNITURE, INC.,; CARI ALLEN Plaintiffs-Appellants, v. STEVEN CALL; RAY, QUINNEY & NEBEKER; DAVID HARRIS; MACHINERY & HARDWARE SUPPLY; GRANITE STONE, L.C., Defendants- Appellees	No. 04-4276
In re: LOG FURNITURE, INC., Debtor.	No. 05-4228
LOG FURNITURE, INC.; GOLDEN MEADOWS PROPERTIES; CARI ALLEN, Plaintiffs -Appellants, v. GRANITE STONE L.C.;	

MACHINERY HARDWARE & SUPPLY; DAVID HARRIS; STEVEN W. CALL, Receiver; ELIZABETH LOVERIDGE, ROBERT H. SWAN,

Defendants- Appellees

In re: LOG FURNITURE, INC.

Debtor.

GOLDEN MEADOWS PROPERTIES; LOG FURNITURE, INC.

Plaintiffs-Appellants

and

CARI ALLEN,

Appellant,

v.

GRANITE STONE, L.C.,

Defendant-Appellee.

No. 05-4266

ORDER

Filed June 5, 2006

Before **LUCERO, PORFILIO,** and **HARTZ,** Circuit Judges.

Appellant Log Furniture, Inc.'s petition for rehearing and appellant Cari Allen's petition for rehearing are denied by the panel that rendered the decision.

The petitions for rehearing en banc were transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, these petitions are also denied.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

By: "s/_____"
Deputy Clerk

11 U.S.C. § 101(41)

(41) "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;

11 U.S.C. § 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) [1] of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or

a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

11 U.S.C. § 323. Role and capacity of trustee

(a) The trustee in a case under this title is the representative of the estate.

11 U.S.C § 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329 (b), 363 (n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510 (c) or 551 of this title.
(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—
(A) by bequest, devise, or inheritance;
(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
(C) as a beneficiary of a life insurance policy or of a death benefit plan.
(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.
(7) Any interest in property that the estate acquires after the commencement of the case.

11 U.S.C § 554. Abandonment of property of the estate

(c) Unless the court orders otherwise, any property scheduled under section 521

(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title

11 U.S.C §726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—
(6) sixth, to the debtor.

11 U.S.C § 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals [1]
(1) from final judgments, orders, and decrees;
(c)

(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

I. the appellant elects at the time of filing the appeal; or

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section

28 U.S.C § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C § 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

NEVADA REVISED STATUTES

DIRECTORS AND OFFICERS

NRS 78.115 ***Board of directors: Number and qualifications.*** *The business of every corporation must be managed under the direction of a board of directors or trustees, all of whom must be natural persons who are at least 18 years of age. A corporation must have at least one director, and may provide in its articles of incorporation or in its bylaws for a fixed number of directors or a variable number of directors, and for the manner in which the number of directors may be increased or decreased. Unless otherwise provided in the articles of incorporation, directors need not be stockholders.*

[Part 31:177:1925; NCL § 1630]—(NRS A 1965, 1012; 1981, 384; 1987, 577; 1993, 949; 1995, 1113; 2003, 3083*)*

NRS 78.120 ***Board of directors: General powers.***

1. Subject only to such limitations as may be provided by this chapter, or the articles of incorporation of the corporation, the board of directors has full control over the affairs of the corporation.

2. Except as otherwise provided in this subsection and subject to the bylaws, if any, adopted by the stockholders, the directors may make the bylaws of the corporation. Unless otherwise prohibited by any bylaw adopted by the stockholders, the directors may adopt, amend or repeal any bylaw, including any bylaw adopted by the stockholders. The articles of incorporation may grant the authority to adopt, amend or repeal bylaws exclusively to the directors.

3. The selection of a period for the achievement of corporate goals is the responsibility of the directors.

[Part 31:177:1925; NCL § 1630]—(NRS A 1991, 1217; 2003, 3083*;* 2005, 2176*)*

NRS 78.139 ***Directors and officers: Duties, presumptions and powers when confronted with change or potential change in control of corporation.***

1. Except as otherwise provided in subsection 2 or the articles of incorporation, directors and officers confronted with a change or potential change in control of the corporation have:

(a) The duties imposed upon them by subsection 1 of NRS 78.138*; and*

(b) The benefit of the presumptions established by subsection 3 of that section.

2. If directors and officers take action to resist a change or potential change in control of a corporation which impedes the exercise of the right of stockholders to vote for or remove directors:

(a) The directors must have reasonable grounds to believe that a threat to corporate policy and effectiveness exists; and

(b) The action taken which impedes the exercise of the stockholders' rights must be reasonable in relation to that threat.

If those facts are found, the directors and officers have the benefit of the presumption established by subsection 3 of NRS 78.138.

3. The provisions of subsection 2 do not apply to:

(a) Actions that only affect the time of the exercise of stockholders' voting rights; or

(b) The adoption or execution of plans, arrangements or instruments that deny rights, privileges, power or authority to a holder of a specified number or fraction of shares or fraction of voting power.

4. The provisions of subsections 2 and 3 do not permit directors or officers to abrogate any right conferred by statute or the articles of incorporation.

5. Directors may resist a change or potential change in control of the corporation if the directors by a majority vote of a quorum determine that the change or potential change is opposed to or not in the best interest of the corporation:

(a) Upon consideration of the interests of the corporation's stockholders and any of the matters set forth in subsection 4 of NRS 78.138*; or*

(b) Because the amount or nature of the indebtedness and other obligations to

which the corporation or any successor to the property of either may become subject, in connection with the change or potential change in control, provides reasonable grounds to believe that, within a reasonable time:

(1) The assets of the corporation or any successor would be or become less than its liabilities;

(2) The corporation or any successor would be or become insolvent; or

(3) Any voluntary or involuntary proceeding pursuant to the federal bankruptcy laws concerning the corporation or any successor would be commenced by any person.

(Added to NRS by ERLINK"http://www.leg.state.nv.us/Statutes/70th/Stats199910.html"\l"Stats199910page1575"1999, 1575)

UTAH CODE

43-1-2. Transfer -- By delivery -- By endorsement -- Rights of transferee.

Title to any security receipt, or equipment trust certificate, which by its terms entitles the bearer to the benefits thereof, may be transferred by delivery by any person in possession of the same, howsoever such possession may have been acquired.

Title to any security receipt, or equipment trust certificate, which by its terms entitles the person named therein to the benefits thereof, and which provides in substance that title thereto is transferable with the same effect as in the case of a negotiable instrument, may be transferred by delivery by any person in possession of the same, howsoever such possession may have been acquired, if endorsed in blank or, if it is endorsed to a specified person, by delivery by such other person.

A person to whom title is so transferred, who takes any such instrument for present or antecedent value, without notice of prior defenses, equities or claims of ownership enforceable against the transferor, shall have absolute title thereto free of any defenses enforceable against, or claims of ownership of, the signer or any prior holder. The holder of any such security receipt, or equipment trust certificate, unless the same has been endorsed in blank by such specified person, shall be deemed prima facie to have title thereto as aforesaid; but when it is shown that the title of any person who has negotiated such instrument is defective, the burden is on the holder to prove that he, or some person under whom he claims, acquired title as a holder for value and without notice as aforesaid.

The provisions of this section shall not be applicable to the transfer of any security receipt, or equipment trust certificate, when it is shown that such transfer was made after the date fixed therein for performance by the signer of his obligations thereunder, or, if no date is so fixed, after the expiration of a reasonable time after the happening of the contingency upon which the signer became obligated to perform. No Change Since 1953

BANKRUPTCY RULE 9010-1
ATTORNEYS - NOTICE OF APPEARANCE

(a) Attorney of Record. *An attorney, or a party not represented by an attorney, who signs and files a petition, pleading or paper, is deemed to have made an appearance in the matter. If an attorney's appearance has not been established previously by the filing of papers in the case or proceeding, the attorney must file a notice of appearance promptly upon undertaking the representation of any party or witness. An attorney of record is responsible in all matters respecting the case or proceeding before and after a judgment, until the closing of the case, until the time for appeal from a judgment or order has expired or a judgment or order has become final after appeal, or until there has been an order permitting withdrawal by or substitution of the attorney in the case or proceeding.*

(b) Notification of Change in Address or Telephone Number. *In all cases and proceedings, attorneys and parties appearing without an attorney must notify the clerk's office of any change in address or telephone number.*

(c) Appearance by Attorney. *A party who has appeared by an attorney, may not appear or act thereafter in its own behalf in the action or take any steps therein, unless an order of withdrawal or substitution is entered by the court after notice to the party's attorney and to parties in interest. However, notwithstanding that a party has appeared or is represented by an attorney, at its discretion, the court may hear a party in open court. An attorney who has appeared of record for any party must:*

(1) represent the party in the action;

(2) be recognized by the court and by all parties to the action as having control of the client's case; and

(3) sign all papers that are to be signed on behalf of the client.